

ORIGINAL

OPEN MEETING



0000091777

MEMORANDUM RECEIVED

TO: THE COMMISSION

2008 DEC 12 A 11:45

FROM: Utilities Division

AZ CORP COMMISSION
DOCKET CONTROL

DATE: December 12, 2008

RE: IN THE MATTER OF THE APPLICATION OF TELECOM MANAGEMENT, INC.
DBA PIONEER TELEPHONE FOR APPROVAL OF AN ASSET PURCHASE
AGREEMENT WITH BROADWING COMMUNICATIONS, LLC. (DOCKET NOS.
T-04277A-08-0369 AND T-04176A-08-0369)

Introduction

On July 17, 2008, Telecom Management, Inc. dba Pioneer Telephone ("Pioneer") filed an application for approval of an Asset Purchase Agreement with Broadwing Communications, LLC ("Broadwing") whereby Pioneer will acquire Broadwing's Residential and Small, Medium and Enterprise ("SME") long distance customer accounts in Arizona. The Applicants do not request the transfer of Broadwing's Certificates of Convenience and Necessity ("CC&N") or other operating authority to Pioneer.

The Applicants state their belief that, "based upon review of the applicable statutes and regulations, that this transaction does not require prior Commission approval and, therefore, absent written notice to the contrary within thirty (30) days of the date of their application, the parties will proceed to consummate the transaction in a timely fashion."

Staff recommends conditional approval of this transaction. Staff also recommends approval of the Joint Applicants' October 22, 2008 request for a waiver of the Commission's rules pertaining to Consumer Protections for Unauthorized Carrier Changes, Arizona Administrative Code ("A.A.C.") R14-2-1901, et. seq.

The Parties

Pioneer is a Maine corporation with principal offices located at 583 Warren Avenue, Portland, Maine 04103. Pioneer is a certificated long distance telecommunications provider in Arizona.

Broadwing is a Delaware limited liability company and a wholly-owned subsidiary of Level 3 Communications, LLC, with principal offices located at 1025 Eldorado Boulevard, Broomfield, Colorado 80021. Broadwing is a certificated long distance telecommunications provider in Arizona.

Arizona Corporation Commission

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The Transaction

On July 9, 2008, the Applicants entered into an asset purchase agreement that contemplates that:

- a. Pioneer will acquire ownership, right, title and interest in and to substantially all of Broadwing's Residential and SME customer accounts, as defined in the asset purchase agreement and,
- b. Broadwing will receive the purchase price set forth in the asset purchase agreement.

Broadwing's customers will be given the opportunity to switch their service to a different carrier. Those Broadwing customers who choose not to switch their service to a different carrier will be provided service by Pioneer. Pioneer anticipates that none of Broadwing's customers will experience any increase in rates due to the Acquisition. To the extent that any of Broadwing's rates are not presently included in Pioneer's tariffs. Pioneer will amend its tariffs accordingly to include such rates. As a result, the transaction should not cause any inconvenience or confusion to Broadwing customers.

Broadwing's technical, managerial and financial personnel will assist with the transition and integration of the acquired assets after the transaction and Pioneer's technical, managerial and financial personnel will continue to serve the transferred Broadwing customers with the same high level of expertise.

The Applicants do not request transfer of Broadwing's Certificates of Convenience and Necessity ("CC&N") or other operating authority, to Pioneer. Broadwing will continue to provide telecommunications services to its large corporate customers in Arizona following the proposed transaction.

Staff's Analysis

The 2007 Annual Reports filed by the Applicants indicate that both companies are not Class A utilities.

The customer notices sent on August 5, 2008 to approximately 266 Residential and 189 SME customers were provided to Staff.

In response to Staff's data request, the Applicants on October 22, 2008 requested a waiver of the Commission's rules pertaining to Consumer Protections for Unauthorized Carrier Changes rules, A.A.C. R14-2-1901, et. seq.

Staff's Recommendations

Staff recommends approval of the proposed transaction conditioned on the following:


THE COMMISSION

December 12, 2008

Page 3

1. That Pioneer submit, as a compliance filing, within sixty days of a Commission Decision in this matter, an affidavit that states that Pioneer has amended its proposed tariffs to include any of Broadwing's rates that were not previously included in Pioneer's tariffs.

Staff also recommends approval of the Joint Applicants' request for a wavier of the Commission's rules pertaining to Consumer Protections For Unauthorized Carrier Changes rules, A.A.C. R14-2-1901, et. seq.

for 
Ernest G. Johnson
Director
Utilities Division

EGJ:AFF:lhv\WVC

ORIGINATOR: Armando Fimbres

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BEFORE THE ARIZONA CORPORATION COMMISSION

MIKE GLEASON
Chairman
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
KRISTIN K. MAYES
Commissioner
GARY PIERCE
Commissioner

IN THE MATTER OF THE APPLICATION
OF TELECOM MANAGEMENT, INC. DBA
PIONEER TELEPHONE FOR APPROVAL
OF AN ASSET PURCHASE AGREEMENT
WITH BROADWING COMMUNICATIONS,
LLC

DOCKET NOS. T-04277A-08-0369
T-04176A-08-0369

DECISION NO. _____

ORDER

Open Meeting
January 13 and 14, 2009
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

A. Introduction

1. On July 17, 2008, Telecom Management, Inc. dba Pioneer Telephone ("Pioneer") filed an application for approval of an Asset Purchase Agreement with Broadwing Communications, LLC ("Broadwing") whereby Pioneer will acquire Broadwing's Residential and Small, Medium and Enterprise ("SME") long distance customer accounts in Arizona. The Applicants do not request the transfer of Broadwing's Certificates of Convenience and Necessity ("CC&N") or other operating authority, to Pioneer.
2. The Applicants state their belief that, "based upon review of the applicable statutes and regulations, that this transaction does not require prior Commission approval and, therefore, absent written notice to the contrary within thirty (30) days of the date of their application, the parties will proceed to consummate the transaction in a timely fashion."
3. Staff recommends conditional approval of this transaction.

1 4. Staff also recommends approval of the Joint Applicants' October 22, 2008 request for
2 a wavier of the Commission's anti-slamming rules pertaining to Consumer Protections for
3 Unauthorized Carrier Changes, Arizona Administrative Code ("A.A.C.") R14-2-1901, et. seq.

4 **B. The Parties**

5 5. Pioneer is a Maine corporation with principal offices located at 583 Warren Avenue,
6 Portland, Maine 04103. Pioneer is a certificated long distance telecommunications provider in
7 Arizona.

8 6. Broadwing is a Delaware limited liability company and a wholly-owned subsidiary of
9 Level 3 Communications, LLC, with principal offices located at 1025 Eldorado Boulevard,
10 Broomfield, Colorado 80021. Broadwing is a certificated long distance telecommunications
11 provider in Arizona.

12 **C. The Transaction**

13 7. On July 9, 2008, the Applicants entered into an asset purchase agreement that
14 contemplates that:

15 a. Pioneer will acquire ownership, right, title and interest in and to substantially all of
16 Broadwing's Residential and SME customer accounts, as defined in the asset
purchase agreement and,

17 b. Broadwing will receive the purchase price set forth in the asset purchase agreement,
18

19 8. Broadwing's customers will be given the opportunity to switch their service to a
20 different carrier. Those Broadwing customers who choose not to switch their service to a different
21 carrier will be provided service by Pioneer. Pioneer anticipates that none of Broadwing's
22 customers will experience any increase in rates due to the Acquisition. To the extent that any of
23 Broadwing's rates are not presently included in Pioneer's tariffs. Pioneer will amend its tariffs
24 accordingly to include such rates. As a result, the transaction should not cause any inconvenience
25 or confusion to Broadwing customers. Those Broadwing customers who choose not to switch their
26 service to a different carrier will receive service from Pioneer.

27 9. Broadwing's technical, managerial and financial personnel will assist with the
28 transition and integration of the acquired assets after the transaction and Pioneer's technical,

1 managerial and financial personnel will continue to serve the transferred Broadwing customers
2 with the same high level of expertise.

3 10. The Applicants do not request transfer of Broadwing's Certificates of Convenience
4 and Necessity ("CC&N") or other operating authority, to Pioneer. Broadwing will continue to
5 provide telecommunications services to its large corporate customers in Arizona following the
6 proposed transaction.

7 **D. Staff's Analysis**

8 The 2007 Annual Reports filed by the Applicants indicate that both companies are
9 non-Class A utilities.

10 11. The customer notices sent on August 5, 2008 to approximately 266 Residential and
11 189 SME customers were provided to Staff.

12 12. In response to Staff's data request, the Applicants on October 22, 2008 requested a
13 wavier of the Commission's anti-slamming rules, rules pertaining to Consumer Protections For
14 Unauthorized Carrier Changes rules, A.A.C. R14-2-1901, et. seq.

15 **E. Staff's Recommendations**

16 13. Staff recommends approval of the proposed transaction conditioned the following:

- 17 1. That Pioneer submit, as a compliance filing, within sixty days of a Commission
18 Decision in this matter, an affidavit that states that Pioneer has amended its
19 proposed tariffs to include any of Broadwing's rates that were not previously
included in Pioneer's tariffs.

20 14. Staff also recommends approval of the Joint Applicants' request for a wavier of the
21 Commission's rules pertaining to Consumer Protections for Unauthorized Carrier Changes rules,
22 A.A.C. R14-2-1901, et. seq.

23 **CONCLUSIONS OF LAW**

24 1. Telecom Management, Inc. dba Pioneer Telephone and Broadwing
25 Communications, LLC are public service corporations within the meaning of Article XV of the
26 Arizona Constitution.

27 2. The Commission has jurisdiction over Telecom Management, Inc. dba Pioneer
28 Telephone and Broadwing Communications, LLC and of the subject matter in this filing.

1 3. The Commission, having reviewed the filing and Staff's Memorandum dated
2 December 12, 2008, concludes that it is in the public interest to grant this application.

3 ORDER

4 IT IS THEREFORE ORDERED that Telecom Management, Inc. dba Pioneer Telephone
5 and Broadwing Communications, LLC's request for approval of an asset purchase agreement is in
6 the public interest and is hereby granted.

7 IT IS FURTHER ORDERED that Telecom Management, Inc. dba Pioneer Telephone and
8 Broadwing Communications, LLC's request for a waiver of the Commission's anti-slamming
9 rules, A.A.C. R14-1901, et. seq. is hereby granted.

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1 IT IS FURTHER ORDERED that Pioneer submit, as a compliance filing, within sixty days
2 of a Commission Decision in this matter, an affidavit that states that Pioneer has amended its
3 proposed tariffs to include any of Broadwing's rates that were not previously included in Pioneer's
4 tariffs.

5 IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

6
7 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

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10 CHAIRMAN

COMMISSIONER

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12 COMMISSIONER

COMMISSIONER

COMMISSIONER

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14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
15 Director of the Arizona Corporation Commission, have
16 hereunto, set my hand and caused the official seal of this
Commission to be affixed at the Capitol, in the City of
Phoenix, this _____ day of _____, 2008.

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19 _____
20 BRIAN C. McNEIL
EXECUTIVE DIRECTOR

21
22 DISSENT: _____

23
24 DISSENT: _____

25 EGJ:AFF:lh\WVC

1 SERVICE LIST FOR: Telecom Management, Inc. dba Pioneer Telephone, Broadwing
Communications, LLC

2 DOCKET NOS. T-04277A-08-0369 and T-04176A-08-0369

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